

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMANDA FRLEKIN, *et al.*

Plaintiffs,

v.

APPLE, INC.,

Defendant.

No. C 13-03451 WHA

**REQUEST TO ADDRESS
PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM**

ADAM KILKER, *et al.*

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Plaintiffs have filed a supplemental memorandum claiming that defendants mislead the Court at the February 20 hearing on the motion for conditional certification. In connection with the pending motion for summary judgment, counsel for defendant Apple are requested to please address plaintiffs' accusations in their pending motion for summary judgment against all plaintiffs and all claims (Dkt. No. 153). The page limit on Apple's summary judgment motion will not be extended.

1 For example, counsel for Apple told the Court that plaintiffs' deposition testimony
2 contradicted their sworn declarations regarding the length of time for the bag and technology
3 checks. In particular, counsel for Apple claimed that plaintiffs stated in their sworn declarations
4 that a security check took ten minutes or longer (Tr. at 32). When asked to reenact a security
5 check at their depositions, however, plaintiffs were unable to last longer "than one minute."
6 *Ibid.* In response, the Court directly asked counsel for Apple whether plaintiffs' representations
7 of the length of time a security check included "reference to standing in line," and counsel for
8 Apple responded, "Interestingly, Your Honor, it was not" (Tr. at 32–33). She then read a
9 passage from plaintiff Pelle's sworn declaration and represented to the Court that plaintiff Pelle
10 claimed that it took between ten and twenty minutes just to undergo the security check. *Ibid.* A
11 review of plaintiff Pelle's declaration, however, clearly indicates that he was *not* referring only
12 to the security check. The very next sentence reads: "The amount of time spent *waiting* and
13 undergoing these security checks would be on the longer ends of these rangers of the manager or
14 security guard was busy helping customers . . ." (Pelle Decl. ¶¶ 9) (emphasis added). Counsel
15 for Apple then stated, "So again, Your Honor, they're isolating these time estimates to the time
16 to go through the check" (Tr. at 34). Counsel for Apple should explain why a distorted
17 description of plaintiffs' declarations and deposition testimony was presented to the Court. This
18 request to address plaintiffs' claims is *not* limited to the specific example provided above.

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20 **IT IS SO ORDERED.**

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22 Dated: April 1, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE